AUG 9 1950
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM 1949

No. 192

CHARLES SCHARF, individually and doing business as Paramount Photo Service, ALBERT HOGLE, and THE FOTOPAK CORPORATION,

Petitioners,

vs.

VALMORE FORGETT, individually and doing business as Service Welding Company,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI

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APPEAL PRINTING CO., INC., 130 CEDAR STREET, NEW YORK, WO 4-3033

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The Court of Appeals for the Third Circuit, reversing the District Court for the District of New Jersey, has held the complaint states a claim upon which relief may be granted against petitioners *i.e.*, for damages under the Anti-Trust Act (Title 15, Sections 1, 2 and 15, U.S.C.A.).

Petitioners, defendants below, pray for certiorari alleging that the decision

> "created a conflict between two Circuits." (Petitioners' Brief, p. 5, last paragraph)

Petitioners cite *International Visible Systems Corporation* v. *Remington Rand, Inc.*, 65 Fed. 2nd 540 (6th Circuit), (erroneously cited in Petitioners' Brief as "85 Fed. 2nd 540) as the conflicting case.

There is no conflict. In the *International* case (*supra*) the complaint, based upon the Anti-Trust Law, alleged only a patent infringement action, brought by defendant maliciously and without probable cause, plus false statements by defendant about plaintiff's patent situation. That complaint did not, as does ours, set out that defendants, as part of their conspiracy to restrain interstate commerce, stopped plaintiff's business by an *ex parte* injunction, obtained maliciously and without probable cause. This fact (App. pp. 3a and 3b) distinguishes our case from the *International* case, and clearly shows that no conflict exists.

The opinion of the Third Circuit (App., p. 17) clearly shows that petitioners' claim of error, based upon *Swartz* v. *Forward Association*, 41 Fed. Supp. 294, and *Hunt, et al.* v. *Crumboch, et al.*, 325 U. S. 821, is baseless, for as the Court of Appeals wrote:

> "It was the failure of certain acts in the course of labor disputes to reveal design or produce consequences within the limitations of the foregoing quotations which made the Sherman Act inapplicable in the Apex case and in the cases which follow it." (App., p. 20)

Both the *Swartz* and the *Hunt* cases involved disputes between labor and management, so that there a choice between motives was available, *i.e.* labor's motive to better its position, and the motive of restraint of trade.

Thus there is neither conflict between Circuits nor error in this case, nor is there any question presented of wide general importance or public interest.

The application is wholly without merit, made solely for the purpose of delay, and should be denied.

Respectfully submitted,

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